SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 1096

LIZZIE MAY McCULLOUGH, EXECUTRIX OF THE ESTATE OF IDA REID, DECEASED, PETITIONER,

vs.

W. M. SMITH, ADMINISTRATOR OF THE ESTATE OF MOSES REID, DECEASED

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

INDEX

	Original	Print
Proceedings in supreme court of North Carolina	1	1
Caption	1	1
Record from superior court of Mecklenburg County	1	1
Application for declaratory judgment	1	1
Exhibit—Will of Mrs. Ida Reid	4	4
Judgment	6	5
Appeal entries	9	8
Exception and assignment of error	9	8
Agreement as to case on appeal	10	9
Docket entries	11	10
Opinion, Brogden, J.	12	12
Order allowing certiorari	[illegible]	[illegible]

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[fols. a & 1]

IN SUPREME COURT OF NORTH CAROLINA, FOURTEENTH DISTRICT, FALL TERM, 1933

No. 399

In the Matter of the Estate of Moses Reid, Deceased

Before Cowper, J., November 14, 1932, Special Term, Mecklenburg Superior Court—Executrix of the Estate of Ida Reid, Deceased, Appealed

This is an appeal by the executrix of the estate of Ida Reid, deceased, from the judgment entered in the cause upon the hearing of the following petition of W. M. Smith, Administrator of the estate of Moses Reid, deceased, for a declaratory judgment directing him in his administration of the estate, to the end that he may distribute the assets of the estate in accord with the law:

In Superior Court of Mecklenburg County

Application for Declaratory Judgment

To Hon. James M. Yandle, Clerk Superior Court for Mecklenburg County, North Carolina:

W. M. Smith would respectfully show to the Court the facts hereinafter set forth, and upon such statement of facts he respectfully requests that the Clerk of the Superior Court for Mecklenburg County forward the papers in this proceeding to the Judge Presiding over the Superior Courts of Mecklenburg County, to the end that a Declaratory Judgment may be rendered in this cause as provided in the Uniform Declaratory Judgment Act, Chapter 102, Public Laws 1931.

Statement of Facts

1. W. M. Smith is the duly qualified and acting admin-
[fol. 2] istrator of the estate of Moses Reid, deceased, colored soldier in the United States Army in the World War.

2. That as such administrator he has received from the Bureau of War Risk Insurance the sum of $6630.50 as the

amount due the estate of the said Moses Reid from a policy of War Risk Insurance obtained by the said Moses Reid while in the United States Military Service; that the aforesaid sum represents the balance due after the death of his father and his mother, who were beneficiaries named in his policy; and that the said sum is now held by the aforesaid administrator subject to distribution to those entitled to the same under the law.

3. That the said Moses Reid died, intestate, and without leaving a wife or child or issue of a child, on August 23, 1920; that his father, Adolphus Reid, died November 22, 1926; and his mother, Ida Reid, died February 22, 1932; that the father and the mother were named in the policy as beneficiaries; and that the estate of the father is represented by Elijah Reid, who has been duly appointed administrator, and is acting in such capacity; and the estate of the mother is represented by Lizzie May McCullough, who was named executrix in the will of Ida Reid, and is now acting in such capacity; that both the administrator of the father's estate and the executrix of the mother's estate have furnished bonds with approved sureties.

4. That a real controversy has developed between the sons and the daughter of the said Adolphus Reid and Ida Reid over the distribution of the assets of the estate of Moses Reid now in the hands of your petitioner; that the basis of the controversy is partly due to the fact that prior to her death Ida Reid executed a paper writing purporting to be a will, and which has been probated as a will by the said Lizzie May McCullough, who is therein named as sole devisee and who is therein appointed executrix; that the three sons of the said Ida Reid have filed a Caveat to the [fol. 3] said purported will, the said caveators being Ross, Elijah and Adolphus Reid, who, with their sister, Lizzie May McCullough, are all of the next of kin and heirs of the said Ida Reid and the said Adolphus Reid.

5. That the funds in the hands of your petitioner are not subject to claims of creditors under the Act of Congress creating a War Risk Insurance, but are subject to distribution to those persons who are entitled to the same under the law.

6. That the paper writing above referred to and which purports to be the last will of Ida Reid, a copy of which is

hereto attached, contains language which the devisee therein, Lizzie May McCullough, contends gives to her the entire estate of her mother, Ida Reid, which consists solely of the money derived from the War Risk Insurance on the life of Moses Reid, whose estate your petitioner is administering; that approximately Four Thousand Dollars had accrued to the estate of Ida Reid prior to her death in the form of monthly installments, none of which she received in her lifetime, but all of which have been paid to the said administratrix, and which fund is now in her hands; that in addition to the fund arising from the said monthly installments, the said Lizzie May McCullough claims that portion of the fund in the hands of your petitioner that goes to the estate of the mother as distributee of the estate of Moses Reid, alleging that the will entitles her to receive the same.

7. That Elijah Reid, as administrator of the estate of Adolphus Reid, father of the insured soldier, Moses Reid, claims a portion of the funds in the hands of your petitioner for the estate of the father.

Wherefore, your petitioner seeks to have rendered for his guidance a Declaratory Judgment as provided in Public Laws, 1931, Chapter 102, declaring what he shall do under the circumstances set forth; and directing him in his administration of the estate of Moses Reid, to the end that he may distribute the assets of the said estate in accord [fol. 4] with the law; and he especially requests a full statement on the following points:

1. Did Ida Reid have an interest in or right to any part of the funds in the hands of your petitioner that she could devise?

2. What sums are due from your petitioner as administrator of the estate of Moses Reid to the administrator of the estate of Adolphus Reid and to the executrix of the estate of Ida Reid, in the light of the fact that each of said estates has already received unequal sums from the War Risk Insurance policy of their deceased son, Moses Reid, whose insurance provided the only assets in the three estates under consideration.

W. M. Smith, Administrator of Moses Reid.

Duly sworn to by W. M. Smith. Jurat omitted in printing.

EXHIBIT TO APPLICATION

Will of Mrs. Ida Reid, North Carolina, Mecklenburg County, City of Charlotte

Will

I, Ida Reid, of 318 Star Street, of the City of Charlotte, of the aforesaid County and State, being of sound and disposing mind, but considering the uncertainty of my earthly existence, do make and declare this my last Will and Testament.

1. My executor, hereinafter named, shall give my body a decent burial and pay all funeral expenses, together with my just debts, out of the first monies which may come into her hands, belonging to my estate.

[fol. 5] 2. I give, devise and bequeath all of my property to my beloved daughter, Lizzie May McCullough, of the above aforesaid County and State.

3. I devise and bequeath all property that I may be entitled to, from any and all persons, including my son, Moses Reid, who died about 1920 or 1921, that may come into my legal possession after my death, to my beloved daughter, Lizzie May McCullough, of the aforesaid county and state.

4. I devise and bequeath all of my property, of all kinds, to my daughter, Lizzie May McCullough, simply because, during my recent years of illness, my beloved daughter, Lizzie May McCullough, has taken care of me in a very splendid manner, in fact, I have made my home with her.

5. In case Lizzie May McCullough does not survive me, at my death, then it is my wish and desire, and I do hereby devise and bequeath all my estate, of all kinds, to her children.

6. I have other children living at present, to-wit: Ross Reid, Elijah Reid, Adolphus Reid, all of Mecklenburg County. I have intentionally omitted to provide for Ross Reid, Elijah Reid and Adolphus Reid, and I hereby declare that such omission is intentional and not occasioned by accident or mistake.

7. I hereby constitute and appoint my beloved daughter, Lizzie May McCullough, my lawful executor to all intents and purposes, to execute this my last Will and Testament, without bond, according to the true and intent meaning of the same, and every part and clause thereof, hereby revoking and declaring utterly void all other Wills and Testaments by me, heretofore made.

In witness whereof, I, the said Ida Reid, do hereunto set my hand and seal, this the 19th day of February, 1932.

——— ———. (Seal.)

Signed, sealed, published and declared by the said Ida Reid to be her last Will and Testament, in the presence of us, who at her request, and in her presence, and in the pres- [fol. 6] ence of each other, do subscribe our names as witnesses thereto.

———— ———. ———— ———.

No answers were filed to the petition.

Upon hearing the petition and argument of counsel, all parties in interest having been represented at the hearing, His Honor, G. V. Cowper, Judge Presiding, entered the following judgment:

IN SUPERIOR COURT OF MECKLENBURG COUNTY

JUDGMENT

This cause coming on for hearing before Hon. G. V. Cowper, Judge Presiding, at a Special Term of the Superior Court for Mecklenburg County, and being heard upon the petition of W. M. Smith, Administrator of the Estate of Moses Reid, a deceased soldier of the United States in the World War; and it appearing that all parties in interest were represented at the hearing, the executrix of the estate of Ida Reid, mother of the deceased soldier, being represented by Mr. J. H. McLain, and the administrator of the estate of the father of said deceased soldier, Adolphus Reid, being represented by Mr. Wade H. Williams; and it being agreed by all parties that the following facts may be found by the Court, and the Court thereupon finding the following facts to be true, to-wit:

1. Moses Reid, deceased, died intestate, unmarried in Mecklenburg County on Aug. 23, 1920, leaving him sur-

viving his father, Adolphus Reid, and his mother, Ida Reid; and that at the date of his death he held a policy of War Risk Insurance in the amount of $10,000.00, and that Adolphus Reid, his father, and Ida Reid, his mother, were named therein as beneficiaries.

2. That Adolphus Reid and Ida Reid as beneficiaries were entitled to receive, after the death of the insured, monthly installments from said insurance in the sum of $28.75 each for a total of two hundred and forty months, if they should live to receive them; but Adolphus Reid died intestate in Mecklenburg County on the 22nd day of November, 1926, [fol. 7] and that he did not in his lifetime receive any of the installments to which he became entitled upon the death of the insured; and that Ida Reid died in Mecklenburg County on the 22nd of February, 1932, leaving a will, to which a caveat has been filed, and that she did not receive any of the installments to which she became entitled upon the death of the insured.

3. That the executrix named in the will of Ida Reid, Lizzie May McCullough, has received from the Bureau of War Risk Insurance the aggregate of all the monthly installments to which Ida Reid was entitled under said policy as beneficiary in the sum of $3938.75; and that, as administrator of the estate of Adolphus Reid, Elijah Reid has received from the Bureau of War Risk Insurance the aggregate of the monthly installments to which the said Adolphus Reid was entitled under said policy as beneficiary in the sum of $2127.50.

4. That since the death of the last surviving beneficiary W. M. Smith has been named administrator of the estate of Moses Reid, the insured soldier, and has been paid the sum of $862.50 by the Bureau of War Risk Insurance as the aggregate of monthly payments to which the insured had been declared entitled to have received in his life, but which had not been paid; and the said administrator received from the Bureau of War Risk Insurance the further sum of $5,768.00 as the commuted value of the unpaid monthly installments due under the policy.

5. That no assets are held in either of the three estates mentioned except the proceeds of the said insurance policy; and that the total proceeds of said policy is at present held

in the following sums: Executrix of Ida Reid holds $3,938.75; Administrator of Adolphus Reid holds $2,127.50; and the administrator of the estate of the insured Moses Reid holds a total of $6,630.50, of which $862.50 represents accrued monthly payments due Moses Reid prior to his death, and $5,768.00 represents the commuted value of the unpaid installments under said policy.

[fol. 8] Wherefore, upon the statement of facts as above set out as found by the Court, the Court renders the following judgment:

1. That the facts of this case brings it within the application of the Uniform Declaratory Judgment Act as enacted by the General Assembly of North Carolina, Public Laws, 1931, Chapter 102.

2. That at the date of the death of Moses Reid his distributees were Adolphus Reid, his father, and Ida Reid, his mother, and as such distributees they became entitled upon his death to his personal estate.

3. That the money now in the hands of W. M. Smith, Administrator of the estate of Moses Reid, consisting entirely of insurance money from War Risk Insurance, is not subject to claims of creditors of the insured.

4. That as to the $862.50, which was due the insured prior to his death; it belongs to the estate of the father and the estate of the mother equally.

5. That as to the $5,768.00 received by him as the commuted value of the unpaid portion of the policy after the death of the beneficiaries, it should be paid to the estate of the father and the estate of the mother respectively in such sums as are required to bring the said estates to an equal sum after the sums paid into each by the Bureau of War Risk Insurance, and the half of the $862.50 have been added together; the intention of this finding being to make the estate of the father and the estate of the mother exactly equal finally. This ruling being based upon the decisions of the Supreme Court of North Carolina, as laid down in Pruden's Case, 199 N. C., 256, and in Holl's Case, 199 N. C., 666.

6. The Court in its discretion declines to rule on the question raised in the petition as to the right of Ida Reid to devise any part of the funds held by the petitioner.

Wherefore, it is ordered, adjudged and decreed that the said W. M. Smith, Administrator of Moses Reid, shall dis- [fol. 9] burse the funds in his hands belonging to the said estate and arising from a policy of War Risk Insurance on the life of the said Moses Reid, in accord with the above ruling, after payment of all costs of administration.

This the 26th day of November, 1932.

G. V. Cowper, Judge Presiding, etc.

IN SUPERIOR COURT OF MECKLENBURG COUNTY

APPEAL ENTRIES

The Executrix of the Estate of Ida Reid, excepts to the judgment entered in the above entitled matter by His Honor, G. V. Cowper, on this the 26th day of November, 1932, and appeals therefrom to the Supreme Court of North Carolina. Notice of appeal given in open Court. Appellant allowed sixty days within which to prepare and serve statement of case on appeal, and appellee allowed sixty days thereafter in which to serve exceptions or counter-case. Appeal bond in the sum of $75.00 adjudged sufficient.

This 26th day of November, 1932.

G. V. Cowper, Judge Presiding.

IN SUPERIOR COURT OF MECKLENBURG COUNTY

EXCEPTION AND ASSIGNMENT OF ERROR

The Executrix of the Estate of Ida Reid, Deceased, excepts to so much of the foregoing judgment as holds: "That as to the $5,768.00 received by him (the administrator of the estate of Moses Reid) as the commuted value of the unpaid portion of the policy after the death of the beneficiaries, it should be paid to the estate of the father and the estate of the mother respectively in such sums as are required to bring the said estates to an equal sum after the sums paid into each by the Bureau of War Risk Insurance, and the half of the $862.50 have been added together; the intention of this finding being to make the estate of the father and the estate of the mother exactly equal finally",

and assigns such holding and finding as error, for that, it does not conform to the provisions of the War Risk Insurance Act, 38 U. S. C. A., Sec. 514, and is in conflict with the provisions of the statute law of North Carolina relating [fol. 10] to the distribution of personal property of an intestate, C. S. 137, Subsection 6.

The foregoing is tendered as the statement of case on appeal to the Supreme Court of the Executrix of the Estate of Ida Reid, Deceased.

This January 24th, 1933.

J. H. McLain, Attorney for the Executrix of the Estate of Ida Reid, Deceased.

Service of the foregoing statement of case on appeal is hereby accepted and receipt of a copy thereof hereby acknowledged.

This January 24th, 1933.

Wade H. Williams, Attorney for the Administrator of the Estate of Adolphus Reid, Deceased.

IN SUPERIOR COURT OF MECKLENBURG COUNTY

AGREEMENT AS TO CASE ON APPEAL

It is hereby agreed that the foregoing shall constitute the case on appeal to the Supreme Court of North Carolina in the matter of the estate of Moses Reid, deceased; and it is further agreed that the petition, judgment and appeal entries shall constitute the transcript of the record on appeal.

This January 24, 1933.

Wade H. Williams, Attorney for the Administrator of the Estate of Adolphus Reid, Deceased. J. H. McLain, Attorney for the Executrix of the Estate of Ida Reid, Deceased. W. M. Smith, Administrator of the Estate of Moses Reid, Deceased.

(Transcript certified by Clerk Superior Court.)

A true copy.

Edward Murray, Clerk of the Supreme Court of North Carolina. (Seal of the Supreme Court of the State of North Carolina.)

[fol. 11] In Supreme Court of North Carolina, Spring Term, 1934

No. 399

In the Case In re Estate of Moses Reid

Appeal docketed 11 April, 1933.
Case Argued 8 November, 1933.
Opinion filed 28 February, 1934.
Judgment Affirmed.
Opinion certified to Superior Court on 2 April, 1934.
A True Copy.

Edward Murray, Supreme Court Clerk.

[fol. 12] In Supreme Court of North Carolina, Spring Term, 1934

In the Matter of the Estate of Moses Reid, Deceased

Civil action, Before Cowper, Special J., November Special Term, Mecklenburg Superior Court

Moses Reid, a soldier in the United States Army during the world war, died intestate on August 23, 1920, without leaving a wife or child or issue of such. He left him surviving his father, Adolphus Reid, and his mother, Ida Reid. Adolphus Reid, the father, died on November 22, 1926, and his mother, Ida, died February 22, 1932. The deceased soldier had a policy of War Risk Insurance in the sum of $10,000.00. In said policy his father and mother were both named beneficiaries. W. M. Smith is the administrator of the estate of the soldier, Moses Reid. Elijah Reid is the administrator of the Estate of Adolphus Reid, the father, and Lizzie May McCulloch is the executrix named in the will of the mother, Ida Reid. The father and mother after the death of the soldier were entitled to receive a monthly installment of $28.75 each for a total of 240 months. However, neither of said beneficiaries received any installment prior to death. The Bureau of War Risk Insurance paid to the administrator of the father the aggregate monthly installments which he would have received up to the time of his death, amounting to $2,127.50. The installments the

mother would have received amounting to $3,938.75, were paid to her executrix. The sum of $6,630.50 was paid to W. M. Smith, the administrator of the estate of the soldier. The children of the mother, Ida Reid, have filed a caveat to her will. The validity of the will has not yet been determined.

This proceeding was brought to determine the rights of the parties in and to the estate of the soldier. It was admitted that the only property of said estate consisted of War Risk Insurance and disability insurance paid by the government.

[fol. 13] The pertinent portion of the judgment rendered was as follows: "That at the date of the death of Moses Reid his distributees were Adolphus Reid, his father, and Ida Reid, his mother, and as such distributees they became entitled upon his death to his personal estate. That the money now in the hands of W. M. Smith, administrator of the estate of Moses Reid, consisting entirely of insurance money from War Risk Insurance, is not subject to claims of creditors of the insured. That as to the $862.50, which was due the insured prior to his death, it belongs to the estate of the father and the estate of the mother equally. That as to the $5,768.00 received by him as the commuted value of the unpaid portion of the policy after the death of the beneficiaries, it should be paid to the estate of the father and the estate of the mother respectively in such sums as are required to bring the said estates to an equal sum after the sums paid into each by the Bureau of War Risk Insurance, and the half of the $862.50 have been added to make the estate of the father and the estate of the mother exactly equal finally.** The court in its discretion declines to rule on the question raised in the petition as to the right of Ida Reid to devise any part of the funds held by the petitioner."

From the foregoing judgment the executrix of the estate of Ida Reid, deceased, appealed.

J. H. McLain, Attorney for Executrix of the Estate of Ida Reid, Dec'd. Wade H. Williams, Attorney for the Administrator of the Estate of Moses Reid, deceased.

OPINION

BROGDEN, J:

When Moses Reid died his distributees were his father, Adolphus Reid, and his mother, Ida Reid. Both were living. The statute cast upon each one-half of the personal property of deceased. Thereupon the right of property to such one-half immediately vested. C. S. 137, sub-section 6.

Neither received as beneficiary in the War Risk Insurance policy any installment from the government during his or her life. Therefore, the whole fund in contemplation of law is now assets of the estate of the dead soldier, to be distributed immediately to the estates of his father and mother. The fact that one beneficiary lived longer than the [fol. 14] other and hence entitled to receive more money in installments from the government, has nothing to do with the right of property as distributee. The intestate law of this state pegged that right at the death of the soldier. In re Estate of Pruden, 199 N. C., 256, 154 S. E., 7; Grady v. Holl, 199 N. C., 155 S. E., 565; Mixon v. Mixon, 203 N. C., 566, 166 S. E., 516; In re Sanders, 205 N. C., 241; Singleton v. Cheek, 284 U. S., 493, 76 Law. Ed. 419. See also Stacy v. Culbertson, et als, 160 S. E., 50.

Affirmed.

A true copy.

Edward Murray, Clerk of the Supreme Court of North Carolina. (Seal of the Supreme Court of the State of North Carolina.)

[fol. 13] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 8, 1934

The petition herein for a writ of certiorari to the Supreme Court of the State of North Carolina is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.